



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

June 20, 2005

**HAND DELIVERED**

Mr. Charles Terreni  
Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Synergy Business Park, Saluda Building  
101 Executive Center Drive  
Columbia, SC 29210

**Frank R. Ellerbe, III**  
1901 MAIN STREET, SUITE 1200  
POST OFFICE BOX 944  
COLUMBIA, SOUTH CAROLINA 29202

PII  
(803) 779-8900  
FAX  
(803) 252-0724

**Re: MCImetro Access Arbitration – Farmers, Home, PBT & Hargray  
Docket No. 2005-67-C**

Dear Mr. Terreni:

Enclosed for filing please find Time Warner Cable Information Services, (South Carolina), LLC's Petition for Rehearing or Reconsideration of Order No. 2005-233. By copy of this letter I am serving the same on all interested parties. Please stamp the extra copy provided as proof of filing and return it with our courier. Should you have any questions, please have someone on your staff contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

/bds  
Enclosure

cc/enc: Julie Y. Patterson, Esquire (via email & U.S. Mail)  
M. John Bowen, Jr., Esquire (via email & U.S. Mail)  
Margaret Fox, Esquire (via email & U.S. Mail)  
Darra W. Cothran, Esquire (via email & U.S. Mail)  
Kennard B. Woods, Esquire (via email & U.S. Mail)  
Shannon Hudson, Esquire (via email & U.S. Mail)  
Ben Mustian, Esquire (via email & U.S. Mail)  
Dan F. Arnett, Chief of Staff (via email & U.S. Mail)  
Ms. Daphne Werts (via email)

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**Docket No. 2005-67-C**

<b>In re:</b>	)	
	)	
<b>Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc.; Home Telephone Co., Inc.; PBT Telecom, Inc.; and Hargray Telephone Co. concerning Interconnection and Resale under the Telecommunications Act of 1996</b>	)	<b>PETITION FOR REHEARING OR RECONSIDERATION OF ORDER NO. 2005-233 OF TIME WARNER CABLE INFORMATION SERVICES, LLC</b>
	)	
	)	
	)	
	)	
	)	
	)	
	)	

Pursuant to S.C. Code Section 58-9-1200 and 26 S.C. Regs. 103-836(4), Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") submits this petition seeking reconsideration or rehearing of the Commission's Order No. 2005-233. In support of its petition TWCIS would show the following:

1. On May 23, 2005, the Commission issued Order No. 2005-233 in the above captioned docket in which it denied TWCIS' request to intervene in the arbitration proceeding between MCImetro Access Transmission Services, LLC ("MCI") and Farmers Telephone Cooperative, Inc. ("Farmers"); Home Telephone Co., Inc. ("Home"); PBT Telecom, Inc. ("PBT"); and Hargray Telephone Co. ("Hargray") (collectively "ILECS"). Counsel was served with Order No. 2005-233 by certified mail on June 10, 2005.

2. TWCIS submits that its substantial rights have been prejudiced because the findings, inference, conclusions, and decisions are in error of law, violate constitutional and statutory provisions, and are arbitrary and capricious or characterized by an abuse of discretion.

3. When TWCIS applied for authority to offer services in South Carolina it informed the Commission and the ILECs that in order to offer service the company had to establish a

connection over the public switched telephone network ("PSTN"). TWCIS also informed the Commission and the ILECs that it planned to establish that connection through its contract with MCI. These ILECs participated in the initial certification docket and the subsequent docket established to expand TWCIS' service area. Neither the ILECs nor the Commission raised an objection to the MCI-TWCIS arrangement. The Commission approved the initial application with knowledge of the contractual relationship between MCI and TWCIS. This arbitration addresses the very issue of whether it is appropriate for MCI to offer these services to TWCIS. The decision reached in this arbitration will have a critical impact on TWCIS' ability to provide service to customers in the ILECs' service areas.

4. The Commission's decision is in error of the law in that it violates the S.C. Administrative Procedures Act ("Act"). By not allowing TWCIS to participate as a party of record in a contested case while the Commission decides issues directly affecting its contractual rights violates the Act. See *Garris v. Governing Board of SC Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48, 52 (Sup. Ct. 1999).

5. S.C. Constitution Article I, Section 22, requires an administrative agency to give procedural due process to parties that come before it even when the matter is not a "contested case" as defined in the Act. See *Garris*, 511 S.E.2d at 52. S.C. Constitution Article I, Section 3, requires agencies to meet minimum standards of due process. Due process is flexible and calls for the procedural protection demanded by the particular situation. *Stono River Environmental Protection Association v. SC Dept. Health & Environmental Control*, 305 S.C. 90, 406 S.E.2d 340, 342 (Sup. Ct. 1991). This situation is unique and calls for a different result from the Commission's past decisions in order to protect TWCIS' due process rights. The Commission's failure to allow TWCIS to participate violates due process.

6. TWCIS' rights have been substantially prejudiced by the Commission's failure to

allow TWCIS to participate in the arbitration proceeding. See *Leventis v S.C. Dept. of Health & Environmental Control*, 340 S.C. 118, 530 S.E.2d 643 (Ct. App. 2000). The primary disputed issue in this arbitration is whether MCI will be able to serve TWCIS customers through its agreement with the ILECs. TWCIS has rights in the ILECs interconnection agreement with MCI as a third party beneficiary of the contract. *Bob Hammond Construction Co., Inc. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890, 891 (Ct. App. 1994). The Order's denial of TWCIS' request to participate is arbitrary, capricious and characterized by an abuse of discretion.

Time Warner Cable Information Services (South Carolina), LLC respectfully requests that the Commission issue an Order:

- A. Reversing its decision in Order No. 2005-233;
- B. Rehearing the arbitration with TWCIS as a participant; and
- C. Granting such other relief as is just and proper.

Dated this 20<sup>th</sup> day of June, 2005.

ROBINSON, McFADDEN & MOORE, P.C.

By Bonnie D. Shealy  
Frank R. Ellerbe, III  
[fellerbe@robinsonlaw.com](mailto:fellerbe@robinsonlaw.com)  
Bonnie D. Shealy  
[bshealy@robinsonlaw.com](mailto:bshealy@robinsonlaw.com)  
Post Office Box 944  
Columbia, SC 29202  
Telephone (803) 779-8900  
Facsimile (803) 252-0724

Attorneys for Time Warner Cable Information  
Services (South Carolina), LLC

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**DOCKET NO. 2005-67-C**

In Re:

Petition of MCImetro Access Transmission  
Services, LLC for Arbitration of Certain  
Terms and Conditions of Proposed  
Agreement with Farmers Telephone  
Cooperative, Inc.; Home Telephone Co.,  
Inc.; PBT Telecom, Inc.; and Hargray  
Telephone Co. concerning Interconnection  
and Resale under the Telecommunications  
Act of 1996

**CERTIFICATE OF SERVICE**

This is to certify that I, Mary F. Cutler, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below the **Time Warner Cable Information Services, (South Carolina), LLC's Petition for Rehearing or Reconsideration of Order No. 2005-233** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

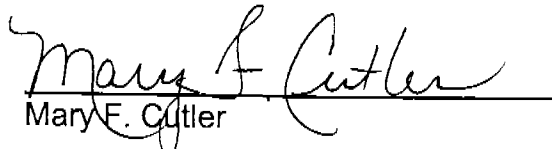
Darra W. Cothran, Esquire  
Woodward, Cothran & Herndon  
P.O. Box 12399  
Columbia, SC 29211

Kennard B. Woods, Esquire  
MCI, Law and Public Policy  
Six Concourse Parkway, Suite 600  
Atlanta, GA 30328

M. John Bowen, Jr., Esquire  
Margaret Fox, Esquire  
McNair Law Firm, P.A.  
P.O. Box 11390  
Columbia, SC 29211

Dan F. Arnett, Chief of Staff  
Ben Mustian, Esquire  
Shannon Hudson, Esquire  
Office of Regulatory Staff  
Post Office Box 11263  
Columbia, SC 29211

Dated at Columbia, South Carolina this 20<sup>th</sup> day of June 2005.

  
Mary F. Cutler